

IN RE: INVESTIGATION:

Case No. 2003-00433
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
ELECTRIC COMPANY

and

Case No. 2003-00434
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
CONDITIONS OF KENTUCKY UTILITIES COMPANY

* * *

SWORN STATEMENT

OF

ROBERT WATT

JULY 28, 2005

received
8/9/05
mm

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1
2 The sworn statement of ROBERT WATT,
3 taken in the offices of Goldberg & Simpson,
4 3000 National City Tower, 101 South Fifth Street,
5 Louisville, Kentucky, on Thursday, the 28th day of
6 July, 2005, at approximately 1:05 p.m.

7
8 EXAMINATION

9
10 BY MR. GOLDBERG:

11 Q. Could you state your full name for me.

12 A. Robert Watt.

13 Q. And your business address?

14 A. 300 West Vine Street, Suite 2100,
15 Lexington, 40507.

16 Q. All right, sir. And are you a lawyer?

17 A. Yes.

18 Q. Okay. Who are you a lawyer with?

19 A. Stoll, Keenon & Park.

20 Q. All right, sir. Are you a -- or do
21 you practice in the area of public utility law?

22 A. Yes.

23 Q. All right. And how long have you done
24 that?

25 A. Since 1977.

1 Q. All right, sir. At Stoll, Keenon &
2 Park?

3 A. Yes.

4 Q. Okay. Is KU, Kentucky Utilities, one
5 of your clients?

6 A. Yes.

7 Q. And how long have they been one of
8 your clients?

9 A. They've been a client of my firm for
10 years, since the '40s, probably. I have actively
11 performed services in the regulatory area for KU
12 probably for only about the last two or three years.

13 Q. Okay. What type of services did you
14 perform for KU before then?

15 A. The first regulatory representation
16 that I had with Kentucky Utilities was the rate case
17 which was concluded in 2004. We began working on it
18 I guess in 2002, so that's when I started working for
19 KU.

20 Q. All right. What kind of work did you
21 do before that, or did you do public utility type
22 work but just not for KU?

23 A. That's correct.

24 Q. All right. Fair enough. Is there a
25 reason you began in 2002 to work for KU?

1 A. Well, I'll speculate a little bit for
2 you.

3 Q. Yes, sir.

4 A. I was asked to represent LG&E in a gas
5 rate case that began in 1999, and that was concluded
6 in 2000. When the company decided to file a combined
7 gas and electric rate case, they asked me to
8 represent LG&E in connection with really the gas
9 aspect of it. As things went along during the course
10 of the representation, I really formed, with some
11 lawyers from Ogden, Newell & Welch, sort of into just
12 a trial team, if you will, and we all shared duties
13 for both companies. So that's really how it came
14 about with KU.

15 Q. All right, sir. So that I understand
16 it, with regard to the two rate cases at issue -- and
17 the numbers are 2003-00433, commonly referred to as
18 the LG&E case, and 2003-00434, the KU case -- you
19 were part of the team and thus you worked on both?
20 Is that what you're communicating?

21 A. Yes.

22 Q. Okay. Did you have a specific
23 assigned task?

24 A. Well, as I said, when it started, my
25 assignment was to devote most of my attention to the

1 gas rates of Louisville Gas & Electric Company. But
2 as the progress of the case went along, it became
3 apparent that we all had to pitch in on all aspects
4 of it, and we all did.

5 Q. All right, sir. When were you first
6 asked to participate as a part of the team?

7 A. I think -- I think it was in -- let's
8 see. It was in the spring of 2003.

9 Q. All right, sir. Do you have a
10 recollection of that conversation?

11 A. A lawyer, who is no longer with
12 Louisville Gas & Electric, by the name of Linda
13 Portasik contacted me and asked me to represent the
14 company in the rate case.

15 Q. Okay. Now, do you have a recognition
16 of when the notice to file a rate case was actually
17 filed?

18 A. It was the end of November, first of
19 December of '03.

20 Q. Okay. And were you asked to
21 participate in a matter involving North American
22 Stainless?

23 A. I did not really work on the North
24 American Stainless matter, no.

25 Q. Okay. Prior to the filing of the

1 notice, had you begun preparing with regard to the
2 rate cases?

3 A. Yes.

4 Q. Okay. What kind of activity had you
5 engaged in?

6 A. We engaged in an analysis of issues.
7 We engaged in an analysis of the calculations of
8 revenue requirements. Depreciation was an issue in
9 the case, and we worked on an analysis of new
10 depreciation schedules. We worked with witnesses in
11 the development of testimony. Of course, worked on
12 drafting the application. It's the usual range of
13 activities that are necessary to prepare a rate case
14 for filing.

15 Q. All right, sir. Had you prepared
16 other rate cases for filing?

17 A. Yes.

18 Q. Okay. How many, the best you can
19 recollect? More than five?

20 A. Yeah. Oh, yeah.

21 Q. Fair enough. Now, with regard to your
22 work -- and let's use the notice of filing date in
23 November of 2003. Did you have -- did you at any
24 time contact employees of the Public Service
25 Commission in your work?

1 A. No.

2 Q. Okay. And I trust that you've had
3 some interaction through the years with members of
4 the Public Service Commission?

5 A. Yes.

6 Q. Okay. I'm going to ask you some names
7 specifically and get you to communicate with me. Are
8 you familiar with Richard Raff?

9 A. Yes.

10 Q. Okay. Prior to notice date, end of
11 November 2003, did you have any conversations with
12 Mr. Raff about the rates?

13 A. Oh, no, I did not.

14 Q. About the rate cases.

15 A. No.

16 Q. Okay. Are you familiar with Mr. Isaac
17 Scott?

18 A. Yes.

19 Q. Okay. Prior to the filing, did you
20 have any -- or the notice, rather, did you have any
21 conversations with Isaac Scott about the two rate
22 cases?

23 A. No.

24 Q. Okay. Jeff Shaw, are you familiar
25 with him?

1 A. Yes.

2 Q. Okay. Did you have any conversations
3 with Mr. Jeff Shaw prior to the notice of filing?

4 A. No.

5 Q. Okay.

6 A. Jon, in these questions I'm assuming
7 that you're asking me about did I have any
8 conversations about the subject of the rate cases.

9 Q. Yes, that's correct.

10 A. Because I have in connection with
11 other matters with the commission.

12 Q. I understand that. And I -- my
13 inquiry is always about the rate cases, Mr. Watt. I
14 don't want to go beyond that because that's not the
15 scope of the engagement. But I would in this
16 question -- period, if you had procedural
17 discussions, please include those in your response.

18 A. Again, about the rate cases?

19 Q. Yes, sir.

20 A. I will.

21 Q. Okay. And I'm assuming your prior
22 answers that you had no conversation prior to notice
23 of filing, you don't want to change that.

24 A. Those answers are correct.

25 Q. All right, sir. Do you know Andrea

1 Edwards?

2 A. No.

3 Q. Do you know Faud Sharifi?

4 A. Yes.

5 Q. Okay. Did you talk to Mr. Sharifi
6 about the two rate cases prior to notice of filing?

7 A. No.

8 Q. Do you know Martha Morton?

9 A. No.

10 Q. Okay. Now, let me ask you the same
11 set of questions with regard to the various
12 commissioners. Do you know Marty Huelsman?

13 A. Yes.

14 Q. Okay. Did you talk to Marty Huelsman
15 about the rate cases prior to notice of filing?

16 A. No.

17 Q. Okay. Same question with regard to
18 Gary Gillis.

19 A. I do know him, but I had no
20 conversations with him prior to the filing of the
21 rate -- of the notice of the rate cases.

22 Q. All right, sir. How about Chairman
23 Mark David Goss?

24 A. I do know Mark David Goss, but I had
25 no conversations with him about the rate cases.

1 Q. And as of that point in time, I do not
2 think he was a member of the commission.

3 A. That's correct.

4 Q. Okay. All right. Now, let me focus
5 time frame again. And after the notice of filing,
6 what did you do with regard to the rate case?

7 A. Well, there was a very active period
8 of preparing the filings. These were the final
9 stages of the preparation. And most of the work that
10 I did was in the drafting and the editing of the
11 papers that we filed.

12 Q. The petition?

13 A. The applications, as well as the
14 prepared testimony that was filed with them.

15 Q. Okay. I presume during that period of
16 time -- and again, I'm -- notice of filing all the
17 way through first date of hearing, which would be
18 April 28th, 2004. Can you think of anything else you
19 did besides what you've already told me with regard
20 to the rate cases?

21 A. Well, after the rate cases were filed
22 until the hearing, I participated in the preparation
23 of responses to data requests and in the preparation
24 of data requests that we submitted to witnesses for
25 the interveners. In addition, I participated in the

1 preparation of rebuttal testimony. I participated in
2 the preparation of witnesses for their testimony. Of
3 course, I researched issues -- legal issues that
4 required research. And, frankly, I can't think of
5 any specific issues now, but I do remember doing
6 research on the rate case.

7 Of course, I participated in strategy
8 meetings about positions to take. I participated in
9 what I call workshop meetings to throw ideas on the
10 table and make sure that we were considering and
11 addressing all the issues that were necessary to be
12 addressed in order to properly present the rate
13 cases. It was what I recognize as fairly typical
14 activities in order to get very significant rate
15 applications ready for hearing.

16 Q. All right, sir. Between the time of
17 the notice of filing and the actual first date of
18 hearing, April 28, 2004 --

19 A. Let me mention something to you.

20 Q. Yes, sir.

21 A. I think April 28th was a -- sort of a
22 prehearing conference. The first day of the actual
23 hearing was May the 4th, I want to say.

24 Q. That's correct. But what I was
25 looking for is the first time all parties,

1 interveners --

2 A. Okay.

3 Q. -- LG&E/KU and Public Service

4 Commission staff were all together --

5 A. That would be correct.

6 Q. -- is April 28, 2004. Can you agree
7 with that date?

8 A. Yes.

9 Q. Fair enough.

10 A. I will say to you, however, I was not
11 in that conference, but I do know that it occurred.

12 Q. All right, sir. You're like most
13 lawyers, Mr. Watt. You're anticipating the
14 questions.

15 A. I'm sorry. I tell my witnesses not to
16 do that.

17 Q. I thought you'd like me to point it
18 out to you. It is a statement. It's not a
19 deposition.

20 A. Okay.

21 Q. But it would be helpful if we process
22 it that way.

23 A. I apologize.

24 Q. That's all right. That's all right.
25 It's a normal tendency.

1 We're back in time now, and I'm
2 looking at that period between notice of filing and
3 the first day all parties come to the Public Service
4 Commission, April 28, 2004. Did you have any
5 conversations with any members of the staff about the
6 rate cases during that period of time, that you
7 recall?

8 A. You know, I don't think I did. I
9 reviewed my records very carefully when Mr. Stumbo's
10 office submitted the subpoenas to the company, and I
11 did not find any record of any communications with
12 anyone at the Public Service Commission when I
13 reviewed those records.

14 Q. Okay. That is the -- any employees,
15 staff members --

16 A. That's correct.

17 Q. -- or commission members?

18 A. That's correct.

19 Q. All right, sir.

20 A. And again, this is about the subject
21 of the rate case.

22 Q. Absolutely.

23 A. I might have had social contact or
24 something with some of them, but nothing about the
25 LG&E/KU rate cases.

1 Q. All right. Are you social friends
2 with --

3 A. No.

4 Q. -- any of the people?

5 A. No, but we happen sometimes to be in
6 the same places for social events.

7 Q. Fair enough. Let me ask you, then,
8 using that same time period, date of -- notice of
9 filing through April 28, 2004, did you have any
10 conversations with any of the interveners?

11 A. Yes. I had some conversations with
12 Betsy Blackford, who is in the rate intervention
13 department of the attorney general's office,
14 primarily about discovery issues.

15 Q. Do you know when those would have
16 occurred?

17 A. Most of the discovery was in January
18 and February and perhaps early March, so it would
19 have been during those months. I can't tell you
20 specifically when I had the conversations with her,
21 though.

22 Q. All right, sir. And when you say
23 "discovery," what are you defining for us?

24 A. In a rate case at the Public Service
25 Commission, there is a procedural schedule that is

1 established. And the procedural schedule calls for
2 two rounds of data requests to be served upon the
3 applicant and one round of data request to be served
4 upon the interveners. Prior to the filing of the
5 rate case, the commission serves the data request on
6 the applicants. And what I'm talking about is the
7 serving and responding to those data requests.

8 Q. Do I understand correctly you would
9 have been responding to Ms. Blackford about data
10 requests submitted by the attorney general?

11 A. Yes.

12 Q. All right. And other than
13 conversation with her, any other conversations with
14 any other interveners?

15 A. I don't recall any.

16 Q. Okay. For the record, could you tell
17 us who you believed were the interveners, as best you
18 can recall?

19 A. The attorney general intervened.
20 KIUC, which is Kentucky Industrial Utility Customers,
21 intervened. MHNA, M-H-N-A, POWER, which is all caps.
22 Community Action Council intervened. The Kentucky
23 Division of Energy intervened. Kroger intervened.
24 Ultimately, North American Stainless became a part of
25 the case, but not by intervention, rather by the

1 consolidation of a proceeding between Kentucky
2 Utilities and North American Stainless.

3 Q. Do you have a recollection of Fort
4 Knox having --

5 A. Yeah. The Department of Defense was
6 an intervener, yes.

7 Q. All right, sir. I think that you've
8 got all the major groups. Euphemistically I've heard
9 folks refer to MHNA/POWER and others as low income
10 advocates.

11 A. That's what I understood them to be,
12 yes, sir.

13 Q. All right, sir. Now, other than
14 Ms. Blackford, you had no communication with anyone
15 until April 28, 2004 about the rate cases.

16 A. When you mentioned Fort Knox, it
17 reminded me that I may have had a conversation with
18 Fort Knox's counsel, whose name I can't recall. He
19 was a lawyer in an office in Alexandria or Arlington,
20 Virginia, the DC area. And again, it would have been
21 about some ministerial aspect of the case relating
22 either to discovery or perhaps whether they were
23 going to have a witness or something in that nature.

24 Q. Okay. Prior to going to the informal
25 conference of April 28, 2004, what was your

1 understanding of what was your role to be at the
2 hearings and possible negotiation sessions?

3 A. Well, first of all, I really did not
4 participate -- strike really. I did not participate
5 in any settlement negotiations prior to May 4, 2004.
6 So I understood that I didn't have a role in
7 settlement negotiations until we arrived at the
8 commission for the first day of the hearing.

9 With respect to the conduct of the
10 hearing, my responsibility was to prepare and be
11 responsible for the direct examination of certain of
12 the LG&E/KU witnesses and to prepare to cross-examine
13 certain witnesses for the interveners, which is what
14 I did.

15 Q. All right, sir. On April 28th until
16 May the 4th, 2004, am I understanding that you did
17 not participate in any discussions with the --
18 between LG&E/KU and the interveners?

19 A. That's correct.

20 Q. And do I further understand you didn't
21 participate in any discussions during that same
22 period about the rate cases with any staff members or
23 commission members?

24 A. That's correct.

25 Q. Okay. What was your understanding of

1 why your role changed on May the 4th?

2 A. When we -- when the hearing commenced,
3 settlement discussions were -- they had been taking
4 place during the April 28 conference. And then I
5 think there were some conversations between
6 representatives of all of the various parties through
7 the course of the weekend. And those settlement
8 discussions were not concluded, but all the parties
9 felt that they could be fruitful. So once the public
10 comment portion of the hearing was concluded, I think
11 all of the parties asked the commission if we could
12 adjourn the hearing for the purpose of continuing
13 settlement negotiations.

14 Q. On May 4th?

15 A. Yes.

16 Q. Yes, sir.

17 A. When that occurred, I was part of the
18 trial team, if you will, and we all ended up in that
19 small conference room -- or small hearing room behind
20 the main hearing room at the commission. And the
21 LG&E/KU group was in a conference room that was right
22 across the hall from that. I primarily was in the
23 conference room, and as -- as things developed during
24 the course of that day, it became my responsibility
25 to draft the settlement agreement. So that was

1 really my major role in the settlement discussions
2 was the drafting of the settlement agreement that
3 ultimately was executed by the parties.

4 Q. Okay. When do you believe you first
5 began drafting a settlement agreement? What time of
6 the day on May the 4th?

7 A. I don't think I started on it until
8 early to mid afternoon.

9 Q. All right, sir. Now, did you have an
10 understanding that as of the time you began drafting
11 that certain items were already agreed by the
12 parties?

13 A. Well, we had already reached an
14 agreement with Kroger. And I believe that David
15 Brown, who was representing Kroger, and I want to say
16 Kendrick Riggs, who was one of my co-counsel --
17 Kendrick is from Ogden, Newell & Welch -- on behalf
18 of LG&E and KU, had put together a settlement
19 agreement. I don't remember if it was in final form
20 or not. There was also a settlement agreement that
21 was in the works in connection with -- senior
22 moment -- the earnings sharing mechanism. So those
23 documents were works in progress. And since they
24 were in existence, being a good lawyer, I took those
25 documents and used them as the basis to start working

1 up a settlement agreement for the rate case.

2 We wanted to try to get ahead of the
3 curve so as we reached agreements we could insert
4 them into the -- sort of the framework of the
5 agreement, if you will. So that's why I started
6 doing it. I wanted to have some sort of a document
7 started so that as we were working along, we could
8 have something for people to look at and get feedback
9 to us.

10 Q. Okay. What was your understanding of
11 the role of the commission during these discussions?

12 A. To my knowledge, the commission
13 itself -- I mean, the three commissioners had no
14 goal.

15 Q. All right, sir. How about the staff?

16 A. From my observations, the staff
17 appeared to be in a role of -- sort of a dual role.
18 Richard Raff was trying to facilitate the
19 discussions, not necessarily to a particular point,
20 but rather to get the parties talking and to also
21 give the parties input as to the commission staff's
22 view of particular resolutions of issues.

23 The same -- well, Isaac Scott and Jeff
24 Shaw were also involved. And I thought what they
25 were doing was looking at settlement proposals or

1 proposed resolutions of issues and giving us feedback
2 as to whether these were things that were acceptable
3 to the staff. They did not engage in negotiations,
4 as I understand negotiations. It was more an
5 oversight activity.

6 Q. When you say "acceptable to the
7 staff," what is your frame of reference?

8 A. Well, if there were issues that we
9 proposed to resolve in a fashion that was
10 inconsistent with what the staff understood was the
11 precedent or the guidance that the staff should
12 follow, Jeff or Isaac or Richard would let us know
13 that. And there were -- some of those issues did
14 come up.

15 Q. Were they serving the same function
16 with regard to the interveners?

17 A. Yes. When I say "us," I mean all the
18 parties.

19 Q. Okay. Would you describe their role
20 as one of mediation?

21 A. It was close to mediation. There was
22 not the arm twisting that we've come to see in
23 mediation today. But in terms of serving as a
24 go-between and carrying messages from one group of
25 parties to another group of parties, that was

1 occurring primarily with Mr. Raff.

2 Q. All right. Did you have an
3 understanding on May the 4th what the position of the
4 attorney general was on rate design as an issue?

5 A. The attorney general's position at the
6 start of the 4th -- let me strike that.

7 Before we ever had any talks, the
8 attorney general's position on rate design was for a
9 rate design that tried to move as much of the rate
10 increase away from residential consumers as the
11 attorney general could reasonably argue, and also to
12 try to keep as small as possible any fixed charges
13 like reconnection charges, customer charges and the
14 like. It was the typical attorney general position
15 on those issues. It was nothing unusual.

16 Q. All right, sir. Did you have a sense
17 that the parties were in basic agreement on rate
18 design at the time you started drafting on May the
19 4th?

20 A. I don't know about when I started
21 drafting, but as the day came to an end, we did reach
22 an agreement on it, yes.

23 Q. How about rate allocation, what was
24 your understanding with regard to the settlement of
25 the parties' positions on rate allocation? Do you

1 have a sense of that term?

2 A. I don't. Tell me what you mean by
3 that.

4 Q. That's interesting because Mr. Riggs
5 used it this morning, and I picked it up. I thought
6 there were only two issues in a rate case, rate
7 design and revenue. And he informed me there's a
8 creature called rate allocation.

9 A. Tell me what Kendrick meant by that.

10 Q. I do not know, so you're --

11 A. I include --

12 MR. KAPLAN: I think he may have meant
13 what you just understood to be rate design.

14 A. I include probably the content of rate
15 allocation and rate design.

16 Q. All right, sir. So am I also correct
17 that there was a fundamental agreement on the revenue
18 side of the gas component?

19 A. That is correct.

20 Q. Okay. So by the time you started
21 drafting, what was unresolved between LG&E/KU and the
22 interveners?

23 A. Well, revenue requirement on the
24 electric side. When I first started drafting, that
25 was unresolved. There were some sort of experimental

1 rates and some rates that applied to a few customers,
2 and I seem to recall that the attorney general was
3 having a little bit of difficulty with some of the
4 issues in that. I wasn't talking to the attorney
5 general about those issues, so I can't remember for
6 sure. But it seems to me as though issues -- for
7 example, there was a -- if I'm not mistaken, there
8 was a time of use pilot -- time of use rate that was
9 ultimately agreed to. And the division of energy
10 were the people we were talking to a lot about that.
11 And I have some recollection that the attorney
12 general was weighing in and had a position, and I
13 just don't remember what it was.

14 Q. Okay. At the time you started
15 drafting on May the 4th, had you come to an
16 understanding that there was an agreement with the
17 attorney general or had been an agreement on revenue
18 requirement on electric sometime prior to May the
19 4th?

20 A. I don't know.

21 Q. Okay.

22 A. I just don't recall.

23 Q. All right. You don't recall any such
24 agreement?

25 A. Well --

1 Q. Or understanding. Agreement is a
2 strong term.

3 A. I understood, as we left the
4 commission on the 4th, that the attorney general
5 announced that his office had agreed with the revenue
6 requirement numbers that ultimately ended up in the
7 settlement agreement.

8 Q. All right.

9 A. I don't think there was any agreement
10 prior to late that afternoon. I -- I just don't
11 remember that.

12 Q. Okay. And prior to leaving on the
13 4th, you were under the impression that there was an
14 agreement?

15 A. Yes, I was.

16 Q. Okay. And tell me what was the basis
17 of your understanding.

18 A. Someone on the KU/LG&E team told me.

19 Q. All right. By way of example, did
20 Mr. Howard or Ms. Blackford communicate to you
21 agreement?

22 A. Not to me, no, no.

23 Q. So as I'm envisioning this, you were a
24 scrivener, Mr. Watt?

25 A. That's pretty much what I was doing on

1 the afternoon of the 4th --

2 Q. All right, sir.

3 A. -- and into the evening, as a matter
4 of fact.

5 Q. But it was communicated by your
6 colleagues and teammates that there was an agreement
7 on revenue requirement.

8 A. That's correct.

9 Q. So as you left on the 4th, were you
10 thinking that there was agreement on the rate cases,
11 on all issues between the interveners and LG&E and
12 KU?

13 A. You know, it seems to me as though
14 there were still some details that needed to be
15 ironed out with some of the large use customers, for
16 example, North American Stainless. But in terms of
17 the major issues in the rate case, I felt that late
18 on the afternoon of the 4th the major issues were
19 settled.

20 Q. All right, sir. Did you continue to
21 work through the evening on your settlement
22 agreement, May the 4th?

23 A. Yes, until we got to the point that we
24 had completed the portions of the agreement as to
25 those issues that we knew were settled, yes.

1 Q. All right. May the 5th, next day,
2 which would have been Wednesday.

3 A. Yes, sir.

4 Q. Okay. Tell me what transpired from
5 your viewpoint on Wednesday, the 5th.

6 A. Well, we were scheduled to have
7 another session among all the parties in the small
8 hearing room. And we were all in that hearing room,
9 and we were really just talking about details. And I
10 can't remember -- I think maybe Dennis Howard was not
11 in the room, but as we were having discussions he
12 came into the room and leaned over and said something
13 that none of us could hear to Betsy Blackford, or
14 maybe her phone rang. I can't remember. But at any
15 rate I do remember she said, "Hold the phone." She
16 said, "We can't go any further." And in essence she
17 said they were not authorized to agree to a
18 settlement of the rate case.

19 And I think immediately thereafter,
20 pursuant to a schedule that had been established by
21 someone, I would assume the commission, we all
22 assembled in the -- in the main hearing room. And
23 the chairman wanted to know the progress of the
24 settlement discussions, and I believe that Kendrick
25 Riggs stood up and -- and reported the status of the

1 settlement negotiations.

2 And after that my recollection is that
3 Richard Raff stood up and stated that he had heard on
4 the radio, either an interview or a statement by
5 Mr. Stumbo that he felt that there was collusion
6 ongoing in the settlement of the rate case and that
7 there were -- I believe also he mentioned ex parte
8 contacts had taken place.

9 And the chairman thereupon went around
10 the room and asked counsel for all of the parties to
11 state whether or not counsel was aware of any such
12 collusion or improper contact, and all of the parties
13 stated that they were not aware. Dennis Howard, from
14 the attorney general's office, did qualify his
15 response by stating that he was not in every single
16 meeting, so he could only speak to the ones that he
17 attended.

18 Thereafter, we adjourned for more
19 settlement discussions, and to try to figure out what
20 to do if the attorney general decided not to
21 participate in all or part of the settlement.

22 Q. Okay. What date -- what day are you
23 speaking of now, the 5th?

24 A. I think this was the 5th, yes.

25 Q. Let me refresh your memory and walk

1 back through a couple of things because you covered a
2 lot of territory here. On the 5th, when you come
3 back, as I understand what you're telling us, shortly
4 before you were convened back in session by the
5 chairman, Ms. Blackford announced that the attorney
6 general would not agree to the revenue requirement
7 numbers. Am I correct?

8 A. That's correct.

9 Q. Okay.

10 A. I don't know that she necessarily
11 mentioned the revenue requirement number
12 specifically, but the message was she was not on
13 board with the settlement.

14 Q. All right. And "she" being, she was
15 representing the attorney general, and that the
16 attorney general was no longer on board.

17 A. That was my understanding.

18 Q. Okay. That's diametrically different
19 than what you left with as an impression on the
20 evening of the 4th, correct?

21 A. That's correct.

22 Q. Okay. As you left on the evening of
23 the 4th, you thought there was an understanding
24 amongst all of the parties.

25 A. I did.

1 Q. Okay. Now, you were not part of the
2 negotiations. The only way that was communicated to
3 you on the 4th was by your colleagues, correct?

4 A. That's correct.

5 Q. So you had no way of being able to
6 tell what Ms. Blackford's authority or Mr. Howard's
7 authority was from the attorney general. Am I
8 correct?

9 A. That is correct.

10 Q. Okay. Do you recall on the 5th the
11 attorney general coming to the Public Service
12 Commission?

13 A. Mr. Stumbo?

14 Q. Yeah.

15 A. Yes, I do.

16 Q. Okay. And do you recall on the 5th --
17 this would have been the same day Ms. Blackford made
18 her announcement there was no agreement -- that there
19 was a meeting sometime after that announcement
20 between Mr. Riggs, Mr. McCall, the attorney general,
21 Ms. Blackford and Mr. Howard?

22 A. I recall having been told about that,
23 yes.

24 Q. All right. And again, I know you're
25 in the drafting status here and not participating in

1 all the discussions. But do you have a recollection
2 of that having occurred, this meeting and it being
3 communicated to you that this meeting occurred?

4 A. Yes, I do have that recollection.

5 Q. Do you recall who told you about the
6 meeting?

7 A. I don't, no.

8 Q. Okay. Do you have any recollection of
9 the content of the meeting, what was said in it?

10 A. I do not.

11 Q. Fair enough. Now, after -- well, you
12 do remember the attorney general coming over, I take
13 it, then.

14 A. I think he came over that afternoon --

15 Q. Okay.

16 A. -- or very late morning. He was not
17 there when Richard Raff stood up and announced what
18 he had heard on the radio.

19 Q. Okay. I'm getting ready to focus that
20 for you. I think that that occurred on the 6th, not
21 the 5th.

22 A. Okay.

23 Q. I would ask you to think about that.
24 Based upon Mr. Raff's statement that he heard on the
25 radio this morning, all right, remarks by the

1 attorney general and reference that first thing in
2 the morning of the hearing, does that refresh your
3 memory that Mr. Raff's colloquy where he asked folks
4 if they knew anything about collusion ex parte
5 occurred on the 6th, not the 5th?

6 A. It easily could have been.

7 Q. Fair enough.

8 A. It easily could have been.

9 Q. After the announcement by
10 Ms. Blackford going back on record, do I take it that
11 the interveners, LG&E, KU and the staff and the
12 commissioners engaged in the hearing process for the
13 remainder of that particular day? I believe it's the
14 5th, but it's whatever the day was.

15 A. Well, I remember that the hearing
16 recommenced. And I guess you're right, it probably
17 was the 5th. And what I remember about the hearing
18 having recommenced is that we put our witnesses on
19 and they were cross-examined by the attorney
20 general's folks, by Ms. Blackford and perhaps
21 Mr. Howard. And we cross-examined -- I believe it
22 was three witnesses from the attorney general's
23 office, maybe four. Personally, I cross-examined two
24 of the attorney general's witnesses. I do remember
25 that.

1 Q. Okay. Now, was the rest of the
2 remainder of that day taken up with actual hearing
3 before the commission?

4 A. The day that we had the hearing -- and
5 I'll accept your statement that it was the 5th -- I
6 think it did take until the end of the day.

7 Q. All right, sir. What do you recall --
8 or what function were you serving in the evening?
9 Were you working the evening of the 5th?

10 A. Well, we were -- the LG&E/KU team was
11 staying at a motel in Frankfort and had arranged for
12 the use of a meeting room. And after the hearing was
13 over, we went back there, although we may have had
14 some discussions at the commission about settlement.
15 I just don't remember.

16 Q. All right. And again, you were in the
17 same role. You were not participating in actual
18 negotiations. You were drafting?

19 A. That's correct.

20 Q. Okay. Were you physically located at
21 the PSC in a different room than the negotiations
22 were taking place in?

23 A. For the most part, yes.

24 Q. Okay. All right. The day of the 6th
25 Mr. Raff comes in and makes his announcement about

1 remarks being made on the radio by the attorney
2 general. Do you have a vivid recollection of that?

3 A. Oh, yes.

4 Q. You described in detail what
5 transpired after that. Do you have recognition of
6 Mr. Riggs also making some remarks after Mr. Raff's
7 remarks, the chairman's requesting to know if anybody
8 knew of such kind of activity, ex parte
9 communication?

10 A. Yes. Mr. Riggs did make some remarks.
11 I don't remember what they were, but he did.

12 Q. All right. Now, did the hearing
13 continue on after that exchange?

14 A. I think we adjourned pretty shortly
15 after that exchange for the purpose of resuming
16 settlement negotiations.

17 Q. All right, sir. And were the parties
18 there for the remainder of the 6th?

19 A. I think so.

20 Q. Okay. What was your understanding of
21 what the position of all the other interveners was as
22 of the 6th? Were they in agreement with LG&E and KU
23 on all issues as of -- as of the end of the day on
24 May the 6th?

25 A. I don't remember exactly when the

1 settlement negotiations were concluded, but the last
2 two parties, two groups of parties to reach agreement
3 were North American Stainless and the low income
4 organizations. Not because there were acrimonious
5 discussions, but rather because the issues were so
6 very complicated it took a long time to work them
7 out.

8 Q. Were those concluded by the close of
9 business on the 6th, "close of business" being the
10 close of the negotiation session?

11 A. I just don't remember what date it
12 was.

13 Q. All right. That would have been --

14 A. That would have been Thursday.

15 Q. Thursday, yes, sir.

16 A. I want to say that was when we
17 concluded everything.

18 Q. All right, sir. My records indicate
19 the next time the parties would have been together
20 was the hearing on May the 12th, six days later.

21 A. Right.

22 Q. Did you attend that hearing?

23 A. I did.

24 Q. All right, sir. Do you recall what
25 you did on the rate cases in terms of work activity

1 between May the 6th and May the 12th?

2 A. I looked at the settlement agreement
3 because everybody was supposed to sign it and have it
4 completely executed by the 12th. And I think there
5 might have been some final signatures that were done
6 that morning right before the hearing started. I
7 think I might have worked with -- strike that. That
8 was a terrible statement.

9 I think I worked with the company
10 representatives in connection with developing
11 testimony to present about the settlement agreement,
12 which the company did on the 12th.

13 Q. So you were working on that between
14 the 6th and the 12th?

15 A. Yes.

16 Q. Okay. Let me ask you, between
17 April 28th and May the 12th, did you have any
18 communication with any members of the staff of the
19 Public Service Commission other than in the sessions
20 that you've described?

21 A. Nothing other than exchanging
22 pleasantries.

23 Q. All right. And did you have any
24 communication with commission members about the rate
25 cases from April 28th through May 12th other than in

1 the process of the hearing?

2 A. No.

3 Q. Okay. May the 12th, tell me what
4 occurs.

5 A. Well, as I said, I seem to recall that
6 we gathered in the hearing room No. 2. And we had to
7 wrap up a few final signatures, it seems to me. The
8 document was executed in counterpart and then, you
9 know, the pages assembled. We had that session, got
10 it finalized. Somebody was attending to getting
11 copies made and the like. We then began the hearing
12 during which I think our only witness was Mike Beer,
13 and we put Mike on the witness stand to have him
14 testify that he believed that the settlement
15 agreement was a reasonable settlement and that it
16 should be approved by the commission.

17 Now, understand the settlement
18 agreement was not a total settlement agreement. It
19 was a stipulation -- combination stipulation and
20 settlement agreement. The attorney general did not
21 agree with the revenue requirement for -- on the
22 electric side and did not agree, I believe, on the
23 depreciation rates. And I think those are the only
24 two things with which the attorney general did not
25 agree. So it was a stipulation among all the other

1 parties on those two issues, but not a settlement
2 agreement.

3 Q. All right. At the close of the
4 hearing on May the 12th, what was your understanding
5 of the issues that the commission had to make a
6 determination on?

7 A. Well, the revenue requirement on the
8 electric side for both companies.

9 Q. Okay. And anything else?

10 A. Excuse me?

11 Q. They were reviewing the settlement
12 agreement as a whole, were they not?

13 A. Yes, I'm sorry, they had to do that as
14 well.

15 Q. Any other outstanding issues?

16 A. Not that I recall.

17 Q. Okay. Now, did you have anything to
18 do on the rate cases after May the 12th?

19 A. I participated in the drafting of LG&E
20 and KU's briefs.

21 Q. All right, sir. And when were they
22 submitted; do you know?

23 A. I can't recall the -- I just don't
24 recall.

25 Q. Fair enough. Do you recall in the

1 final order -- not final order -- the order of the
2 Public Service Commission?

3 A. I want to say around June 10th or so.

4 Q. All right, sir. Sometime middle of
5 June, toward the middle of June?

6 A. (Nods head up and down).

7 Q. Do I take it you had no contact about
8 the rate cases with any of the commissioners between
9 final presentation of testimony sometime on May the
10 12th and the issuance of the ruling in June?

11 A. I had a social contact with Mark David
12 Goss in the end of May. And, of course, I shook his
13 hand and asked him how he liked being a commissioner,
14 because at that point he was still relatively new,
15 and told him that I appreciated the way that he
16 conducted the hearing.

17 Q. All right, sir. Anything on the
18 merits?

19 A. No.

20 Q. Okay. Anything else you remember of
21 the conversation?

22 A. No, other than just pleasantries. It
23 was a social setting.

24 Q. All right, sir. Now let me ask you
25 the same question with regard to staff.

1 A. I don't think I had contact with any
2 staff member about LG&E or KU after May the 12th.

3 Q. All right. So the only communication
4 you had with either staff or commission member was
5 the exchange of pleasantries with Chairman Goss?

6 A. That's correct.

7 Q. Okay. And was that some sort of
8 Memorial Day event?

9 A. It happened to be Memorial Day
10 weekend. Mr. Goss' wife and I serve on the board of
11 directors, with about 75 other people, of the
12 Kentucky Mountain Laurel Festival. And it was at a
13 director's dinner for that organization where I saw
14 him.

15 Q. All right, sir. In your time and
16 experience in these two rate cases, did you ever
17 witness what you thought was an ex parte
18 communication by any of the parties?

19 A. No.

20 Q. And while the term "collusion" is a
21 subjective term, at any time in your time and
22 experience in the two rate cases did you witness
23 anything that you thought was collusive behavior?

24 A. No.

25 Q. Okay. And let me finally ask you with

1 regard to the use of the term "inappropriate," which
2 is also a subjective term, did you see or witness
3 anything in your time and experience in the two rate
4 cases that you thought was inappropriate behavior?

5 A. To the extent that the attorney
6 general renigged on the settlement agreement, I felt
7 that that was inappropriate. But other than that, I
8 saw none.

9 Q. All right, sir. Are you familiar with
10 the case of Cowan versus LG&E?

11 A. Yes.

12 Q. Okay. And I take it you are thus
13 familiar with the tenets regarding ex parte
14 communication?

15 A. I am.

16 Q. All right. And how do you incorporate
17 those tenets in your practice before the Public
18 Service Commission?

19 A. I simply do not -- now you're talking
20 about my particular --

21 Q. Yes, sir.

22 A. My personal contact?

23 Q. Yes.

24 A. All right.

25 Q. And with specific reference to how you

1 would have used those tenets and your understanding
2 of them in this particular -- these two rate cases.

3 A. Well, I take a -- maybe an extreme
4 approach. I make sure that I have as little contact
5 with members of the commission and its staff as I
6 can. And when I do have a contact with those
7 persons, I make very sure that I do not talk about
8 the substance, much less the merits of any proceeding
9 in which I'm representing a party before the Public
10 Service Commission.

11 Q. Okay. And I trust you -- you
12 conducted yourself that way with regard to these two
13 rate cases.

14 A. Yes, sir.

15 Q. And with regard to your powers of
16 observation, did you believe that the interveners and
17 LG&E/KU team members also conducted themselves that
18 way?

19 A. Absolutely.

20 MR. GOLDBERG: Okay. That's all I
21 have, Mr. Watt. Thanks much.

22 THE WITNESS: Okay.

23 (STATEMENT CONCLUDED AT 1:55 P.M.)

24 * * *

25

1 STATE OF KENTUCKY) (
2) (SS:
3 COUNTY OF JEFFERSON) (
4

5 I, ELLEN L. COULTER, Notary Public,
6 State of Kentucky at Large, hereby certify that the
7 foregoing sworn statement was taken at the time and
8 place stated in the caption; that the appearances
9 were as set forth in the caption; that prior to
10 giving testimony the witness was first duly sworn by
11 me; that said testimony was taken down by me in
12 stenographic notes and thereafter reduced under my
13 supervision to the foregoing typewritten pages and
14 that said typewritten transcript is a true, accurate
15 and complete record of my stenographic notes so
16 taken.

17 I further certify that I am not
18 related by blood or marriage to any of the parties
19 hereto and that I have no interest in the outcome of
20 captioned case.

21 My commission as Notary Public expires
22 November 5, 2007.

23 Given under my hand this the 8th
24 day of August, 2005, at Louisville,
25 Kentucky.



ELLEN L. COULTER
NOTARY PUBLIC

1 I, the undersigned, ROBERT WATT, do hereby
2 certify that I have read the foregoing sworn
3 statement, and that, to the best of my knowledge,
4 said sworn statement is true and accurate, with the
5 exception of the corrections, if any, listed on the
6 errata sheet.

7
8 

9 ROBERT WATT

10
11 Subscribed and sworn to before me this 7th
12 day of September, 2005.

13
14
15
16 
17 NOTARY PUBLIC

18
19 My commission expires 12-19-2008

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LOUISVILLE, KY 40203

ERRATA SHEET

NAME Robert Watt DATE OF DEPOSITION July 28, 2005

After having read my deposition, I wish to make the following changes:

Page 21 Line 14
Change "goal" should be "role"
Reason for change _____

Page 42 Line 6
Change "renigged" should be "reneged"
Reason for change _____

Page _____ Line _____
Change _____
Reason for change _____

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